

BEFORE THE  
**United States Court of Appeals**  
 FOR THE DISTRICT OF COLUMBIA CIRCUIT

Case No. 84-1600

SHURBERG BROADCASTING OF HARTFORD, INC.,  
*Appellant,*  
 v.  
 FEDERAL COMMUNICATIONS COMMISSION,  
*Appellee,*  
 AND  
 ASTROLINE COMMUNICATIONS COMPANY  
 LIMITED PARTNERSHIP,  
*Intervenor.*

On Review of an Order of the Federal  
 Communications Commission

**BRIEF OF INTERVENOR  
 ASTROLINE COMMUNICATIONS COMPANY  
 LIMITED PARTNERSHIP**

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May 30, 1985

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

Federal Communications Commission	
Date	Exhibit No. 18
Filed	Shurberg Broadcasting
Identified	<input checked="" type="checkbox"/> X
Disposition	Received <input checked="" type="checkbox"/> X
	Rejected <input type="checkbox"/>
Reporter	George Holmes
Date	9-23-78

**CERTIFICATE REQUIRED BY RULE 8(c) OF THE  
GENERAL RULES OF THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

The undersigned, counsel of record for Astroline Communications Company Limited Partnership, Intervenor in support of Appellee, certifies that the following listed parties, including Intervenors, appeared in the proceedings below before the Federal Communications Commission:

*Appellant:*

Shurberg Broadcasting of Hartford, Inc.

*Intervenors (in support of Appellee):*

Astroline Communications Company Limited Partnership

*Amicus (in support of Appellee):*

Department of Communications of the Capital Region  
Conference of Churches, The Communications Management Team of the Christian Conference of Connecticut and Sherman G. Tarr

*Non-intervening parties filing below in support of Appellee's position:*

Faith Center, Inc.

*Other non-intervening parties filing below:*

Interstate Media Corporation

These representations are made in order that judges of this Court, *inter alia*, may evaluate possible disqualifications or recusal.

/s/ Thomas A. Hart, Jr.

Thomas A. Hart, Jr.

Attorney of Record for Astroline  
Communications Company  
Limited Partnership

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**STATEMENT OF ISSUES PRESENTED\***

I. Whether the Commission acted arbitrarily and capriciously when it unanimously concluded that appellant Shurberg Broadcasting of Hartford, Inc. ("SBH") had no absolute right to a comparative hearing by virtue of its filing of a competing license application in the middle of a noncomparative renewal proceeding in which the incumbent licensee was attempting to consummate a distress sale.

II. Whether the Commission, pursuant to its statutory and regulatory authority, possessed the administrative discretion to balance SBH's asserted right to a comparative renewal hearing against the public interest in promptly (a) stripping Faith Center of the license and facilities of WHCT-TV; (b) concluding eight years of protracted administrative and judicial proceedings; and (c) furthering diversity of media content through the participation of qualified minority citizens in the ownership and operation of the television station.

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\*Pursuant to Rule 8(b) of the General Rules of this Court, counsel for intervenor Astroline Communications Company Limited Partnership state that the pending case has not previously been before this Court, or any court, under the same or similar title. The following are cases which have been, are, or may be related to the instant case, and either have been, or may be, presented to this Court:

1. *Alan Shurberg v. FCC*, No. 83-2098, D.C. Cir., dismissed, May 25, 1984, *rehearing denied*, July 24, 1984.
2. *In re Shurberg Broadcasting of Hartford, Inc.*, No. 84-5363, D.C. Cir., filed June 12, 1984.
3. *In re Shurberg Broadcasting of Hartford, Inc.*, No. 84-5683, D.C. Cir., filed September 28, 1984.
4. *Shurberg Broadcasting of Hartford, Inc. v. FCC*, No. 84-3406, D.D.C., filed November 7, 1984.

III. Whether the Commission acted arbitrarily and capriciously when it decided that the distress sale purchaser, intervenor Astroline Communications Company Limited Partnership ("Astroline"), is a qualified licensee, and a qualified minority purchaser under the distress sale program.

IV. Whether it was arbitrary or capricious for the Commission to decide that there is no merit to SBH's contention that the distress sale policy amounts to improper reverse discrimination.

V. Whether the Commission, in the routine handling of this proceeding, was infected to such a degree by ex parte communications or other procedural irregularities to require this Court to void its decision.

#### COUNTERSTATEMENT OF THE CASE

##### A. Overview.

This case is the final appellate action of a long series of administrative, federal and state court proceedings involving a former licensee of the Federal Communications Commission ("Commission"), Faith Center, Inc. ("Faith Center").<sup>1</sup> Faith Center once held licenses to operate three television stations, located in San Bernardino and San Francisco, California and Hartford, Connecticut, and an FM radio station located in Los Angeles. *Faith Center, Inc.*, 82 F.C.C. 2d at 2. Faith Center lost its San Bernardino license in 1982, and this Court recently issued an Order affirming the Commission's decision to deny Faith Center's renewal

<sup>1</sup>Faith Center, in addition to being a broadcast licensee, is a non-denominational Christian church founded in 1947 and headquartered in Glendale, California. *Faith Center, Inc.*, 82 F.C.C.2d 1 (1980), *aff'd mem. sub nom. Faith Center, Inc. v. FCC*, 679 F.2d 261 (D.C. Cir. 1982), *cert. denied*, 459 U.S. 1203 (1983).

applications for its San Francisco television station and Los Angeles FM radio station. *Faith Center, Inc. v. FCC*, Nos. 83-2295 *et al.* (May 9, 1985). This case involves the last broadcast license held by Faith Center, WHCT-TV in Hartford, Connecticut, which was transferred to Astroline Communications, Company Limited Partnership ("Astroline") on January 23, 1985 pursuant to the Commission's distress sale policy. J.A. IV, 1064.

##### B. Background of Commission Proceedings Involving Faith Center Proceedings and Minority Ownership.

This case involves one licensee, Faith Center, and its attempts to transfer one license—Channel 18, the oldest television station licensed to Hartford. However, the facts in this case cannot properly be analyzed in isolation, and should be considered in a broader context relating to other Commission proceedings involving Faith Center in particular, and the broadcast industry in general.

Faith Center's controversy began in 1977 when the Commission instituted an informal investigation into Faith Center's operation of its San Bernardino television station. *Faith Center, Inc.*, 82 F.C.C. 2d at 10. This informal investigation resulted from a letter from a private citizen in California who alleged that Faith Center solicited funds over the air which were not used for the purpose described in the broadcast. *Id.* at 8, 10. That investigation ultimately cost Faith Center the licenses for all its broadcast properties.

During the same year the Commission instituted its informal investigation against Faith Center, it also commenced an omnibus initiative to promote minority participation in the ownership of broadcast properties. In 1977, in response to petitions filed by the National Association of Broadcasters, the National Black Media Coalition, the National Telecommunications and Information Administration (then



the White House Office of Telecommunications Policy), and the United States Department of Commerce, among others, the Commission modified many of its existing policies and adopted a few new ones in an effort to foster minority ownership of radio and television stations. See, e.g., *New Financial Qualifications Standards for Broadcast Assignment and Transfer Applications*, 87 F.C.C.2d 200 (1981) (where the Commission, after lengthy study, relaxed financial requirements for station owners).

In May 1978, the Commission issued a *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 F.C.C.2d 979 (1978) ("1978 Policy Statement"). In the 1978 *Policy Statement*, the Commission adopted a recommendation made by the petitioning organizations and others that called for the Commission to amend its "distress sale" policies to allow a licensee whose renewal application has been designated for hearing to sell the station to a qualified minority organization at a discounted price (currently limited to 75 percent of the fair market value of the station).<sup>2</sup> The distress sale option enables the seller to avoid the expense of a hearing and the possibility that its license will be revoked while at the same time causing the licensee to

<sup>2</sup>The distress sale program was adopted initially in other contexts, particularly where a licensee is either bankrupt or is physically or mentally disabled. *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 F.C.C.2d 979, 983 (1978). The Commission simply expanded the distress sale program to apply to minorities by stating "[T]he avoidance of time-consuming and expensive hearings will more than compensate for any diminution in the licensee revocation process as a deterrent to wrongdoing." See 1978 *Policy Statement*, 68 F.C.C.2d at 983.

relinquish control of the license and sell the assets of the station. *Id.* at 983.<sup>3</sup>

To encourage wide and immediate use of the distress sale policy, the Commission clarified its *Policy Statement* later in 1978 to permit a few licensees caught between the effective date of the distress sale policy and the commencement of their already-designated hearings to opt for distress sale relief to "further encourage minority ownership without adversely affecting the Commission's interest in preserving its sanctions against misconduct." *Clarification of Distress Sale Policy*, 44 Rad. Reg. (P&F)2d 479, 480 (1978).

#### C. Faith Center Seeks Distress Sale Relief.

On October 11, 1978, the Commission designated Faith Center's San Bernardino television station renewal application for hearing pursuant to 47 U.S.C. § 309(e)(1982). *Faith Center, Inc.*, 69 F.C.C.2d 1123, 1126-27 (1978). After lengthy proceedings, on March 7, 1980, the Administrative Law Judge ("ALJ") dismissed Faith Center's application and terminated the proceedings because Faith Center consistently refused to comply with the ALJ's discovery orders. J.A. I, 96. The case was appealed to and affirmed by the Commission and ultimately by this Court.<sup>4</sup> The Commission, in a similar proceeding, denied the renewal application

<sup>3</sup>Since its adoption in 1978, 33 distress sales have been approved by the Commission and the overall effort of fostering minority ownership has been moderately successful. See *Distress Sales Approved*, copies available from FCC Consumer Assistance and Small Business Division (updated Jan. 17, 1985). The number of minority controlled stations has nearly doubled from less than 1 percent in 1977 to now close to 2 percent of all broadcast properties licensed by the Commission.

<sup>4</sup>See n.1, *supra* at 2.

for Faith Center's radio station in Los Angeles. *Faith Center, Inc.*, 89 F.C.C.2d 1054 (1982).

The Commission next had to decide what to do with Faith Center's licenses for its San Francisco and Hartford television stations. At the request of the Department of Communications of the Capitol Region Conference of Churches ("Conference") and other parties no longer in this proceeding, the Commission voted on July 31, 1980 to solicit comments from interested parties on how to proceed with these two licenses. See Report No. 17367 (released Aug. 1, 1980); Letter to Jay E. Ricks, Esq., FCC 80-460 (released Aug. 11, 1980) at pp. 2-3. J.A. I, 82, 84-85.

Faith Center sought the right to transfer the assets of the San Francisco television station to a minority purchaser pursuant to the Commission's distress sale policy. The Commission denied that request because the period of time in which Faith Center could choose the distress sale option had expired with regard to the San Francisco license, as Faith Center had already been required to file a supplemental license renewal application. *Faith Center, Inc.*, 86 F.C.C.2d 891 (1981). However, the Commission said that it would permit Faith Center to opt for a distress sale of its license of WHCT-TV in Hartford because, unlike the San Francisco license, no supplemental renewal application was required or had been filed. Faith Center timely chose to pursue the distress sale policy. The Conference filed a Petition for Reconsideration, arguing that rather than designating the previously filed WHCT-TV renewal application for hearing for the purpose of completing a distress sale, the Commission should have required the filing of a supplemental renewal application by WHCT-TV and accepted competing applications. The Commission denied the Petition for Reconsideration, finding that designation of the WHCT-TV application for hearing in order to permit the distress sale

was not inconsistent with any Commission rule or policy. 86 F.C.C.2d at 894.

**D. Faith Center's First Two Attempted Distress Sales Failed Due to the Minority Purchasers' Lack of Financing, a Frequent Problem Which Has Been Recognized by the Commission.**

Faith Center's first two attempts to transfer the station via a distress sale were unsuccessful, because the purchasers—like most minority broadcasters—apparently could not acquire the necessary financing. *Faith Center, Inc.*, 57 Rad. Reg. (P&F)2d 1185, 1190 n.13 (1984). It is undisputed that "financing remains a major obstacle to increasing minority participation in broadcast ownership." National Association of Broadcasters, *Broadcasting and the Government; A Review of 1983 and a Preview of 1984* 94 (1984). In an effort to help reduce the financial obstacles minorities face in acquiring broadcast properties, the Commission in September 1981 convened the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications ("Advisory Committee"). The Advisory Committee, composed of government and industry experts in telecommunications and finance, assembled to review the Commission's minority ownership policies, and suggest changes in these policies where appropriate.

On December 2, 1982, the Commission unanimously adopted the proposals of the Advisory Committee and issued a second Policy Statement which confirmed its commitment to the advancement of minority ownership in broadcasting. *Policy Statement and Notice of Proposed Rule Making, Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, 92 F.C.C.2d 849 (1982) ("1982 Policy Statement"). Specifically, the Commission reviewed in detail, and adopted without change, the Advisory Committee's recommendation that the distress

sale policy be available to limited partnerships when the general partner is a minority citizen and holds at least 20 percent equity interest in the station. *Id.* at 855. Previously, these policies were available only to entities in which minorities owned more than 50 percent. 1982 *Policy Statement* at 983 n.20. However, the new policy recognized that "significant minority involvement" . . . exists by virtue of a minority general partner's ownership interest and complete control over a station's affairs." *Id.*<sup>5</sup> In its 1982 *Policy Statement*, the Commission reaffirmed that acute underrepresentation of minorities among the owners of broadcast properties is troublesome in that it is the licensee who is ultimately responsible for identifying and serving the needs and interests of his audience. *Id.* at 849-850. Unless minorities are encouraged to enter the mainstream of the commercial broadcasting business, the Commission recognized that a substantial portion of our citizens will remain unserved and the larger nonminority audience will be deprived of views of minorities. *Id.*<sup>6</sup>

<sup>5</sup>The Commission also adopted the Advisory Committee's recommendations to delegate the authority of reviewing distress sale applications to the Broadcast Bureau (now the Mass Media Bureau) to process and grant distress sale petitions that are consistent with Commission policies. 1982 *Policy Statement*, 92 F.C.C. 2d at 858-859. See *Strategies for Advancing Minority Ownership Opportunities in Telecommunications; The Final Report of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications*, May 1982.

<sup>6</sup>The Commission, in designing the distress sale policy, relied heavily upon several decisions of this Court which set the legal precedents for consideration of minority participation in ownership within Commission proceedings. Although many of these situations involve comparative hearings, the general thrust of these cases was aimed at encouraging minority ownership and participation in broadcasting as a way to foster diversity of media content which has been a goal of the Commission since its inception. Judicial interpretation and con-

#### E. Faith Center Consummates a Distress Sale to Astroline Over Opposition From Mr. Shurberg.

At the time the Commission designated Faith Center's Hartford renewal application for hearing in 1980, no competing applications had been filed. Pursuant to instructions from the Broadcast Bureau three days after designation of the application for hearing, Faith Center advised the Commission of its intention to pursue distress sale relief. See *Statement of Distress Sale Election* (filed Dec. 4, 1980). J.A. I, 141. In a Petition for Special Relief filed on February 20, 1981, Faith Center proposed the distress sale of WHCT-TV to the Television Corporation of Hartford ("TCH"). J.A. I, 141. On December 23, 1981, after considerable litigation, the Commission granted Faith Center's Petition for Special Relief subject to the conditions that TCH was found to be fully qualified to be a Commission licensee and the assignment was consummated within 90 days. The Commission stated that should the proposed transfer not be consummated, "this proceeding will return to its status prior to the filing of the above-described Petition for Special Relief." See *Faith Center, Inc.*, FCC 81-594, ¶ 12 (December 23, 1981). J.A. I, 247. As noted above, TCH was unable to carry out the assignment, and voluntarily withdrew its application.

On September 29, 1982, Faith Center filed its second Petition for Special Relief proposing a distress sale to a minority-controlled applicant, Interstate Media Corporation ("IMC"). At this point, Alan Shurberg, sole owner of Shurberg Broadcasting of Hartford, Inc. ("SBH"), then

struction of the Communications Act of 1934, therefore, became the foundation for the Commission's minority ownership policies. See *Garrett v. FCC*, 513 F.2d 1056, 1063 (D.C. Cir. 1975); *TV 9, Inc. v. FCC*, 495 F.2d 929 (D.C. Cir. 1973), cert. denied, 418 U.S. 986 (1974); *Citizens Communications Center v. FCC*, 447 F.2d 1201 (D.C. Cir. 1971).

acting as a "public citizen," entered the ongoing proceeding by filing a Petition to Deny the Assignment Application on November 12, 1982. The Conference also filed a Petition to Deny. In September 1983, the Commission granted Faith Center's Second Petition for Special Relief and denied the Petitions to Deny. *Faith Center, Inc.*, 54 Rad. Reg. (P&F)2d 1286 (1983). Consistent with its instructions for the earlier distress sale to TCH, the Commission concluded that the proposed assignment to IMC met the basic requirements of the distress sale policy, but emphasized that there were two conditions: (1) that the assignee be found to be qualified; and (2) that the contemplated assignment be consummated within 90 days.

On December 2, 1983, SBH filed an application for a permit to construct a station in Hartford, Connecticut that would be mutually exclusive with Faith Center's pending renewal application for WHCT-TV. J.A. II, 388. In its application, SBH failed to complete Section III, the section in which the applicant establishes its financial qualifications. Instead of completing this section, SBH stated: "[F]inancial certification to be supplied." J.A. II, 398. The Commission did not accept Mr. Shurberg's application for filing because its rules preclude the filing of competing applications against a renewal application in hearing status until the Commission has finally disposed of the renewal application. See 47 C.F.R. § 73.3516(e); see also *Faith Center, Inc.*, 57 Rad. Reg. (P&F)2d 1185, 1188 (1984) ("Faith's . . . renewal application was and remains in hearing status and competing applications cannot be filed until the proceeding has been terminated").

On April 19, 1984, SBH filed a Petition for Extraordinary Relief. On July 3, 1984, the Commission's General Counsel's Office, after reviewing SBH's Petition and Faith Center's Petition for Special Relief, concluded that both petitions

were mutually exclusive and decided to afford all relevant parties the opportunity to file comments on the two pleadings, as well as replies to those comments, in an effort to decide the fate of WHCT-TV. Astroline filed comments in support of Faith Center's Petition for Special Relief and Comments in Opposition to SBH's Petition for Extraordinary Relief. The Mass Media Bureau of the Commission filed comments supporting Faith Center's Petition. The Conference also filed comments in support of the distress sale petition, and SBH filed Consolidated Comments opposing the distress sale, arguing that it had an exclusive right to a comparative hearing with Faith Center's renewal application.

On December 7, 1984, the Commission, by unanimous vote, issued a Memorandum Opinion and Order granting Faith Center's Petition for Special Relief and denying SBH's Petition for Extraordinary Relief. *Faith Center, Inc.*, 57 Rad. Reg. (P&F)2d 1185 (1984) (cited hereinafter as "*MO&O*"). The grant of the petition was conditioned, however, on Astroline's being found qualified and further required that the transfer be consummated within 60 days, rather than the usual 90 day period that had been extended to the other two distress sale assignees. *MO&O* at 6. J.A. I, 6.

The Commission denied SBH's Petition for Extraordinary Relief for numerous reasons articulated in its *MO&O*. The Commission explained that the WHCT-TV renewal application remained in hearing status, thus providing no "window" in which SBH could file a competing application. The Commission interpreted its prior order conditionally approving the distress sale to IMC as not granting the WHCT-TV renewal application unless both conditions were met. Because IMC did not consummate the assignment, the Commission held that the renewal application was not

granted and "Faith's renewal application automatically reverted to hearing status." *MO&O* at 3. J.A. I, 3.

SBH relied heavily on this Court's decision in *New South Media Corp. v. FCC*, 685 F.2d 708 (D.C. Cir. 1982) as compelling the Commission to initiate a comparative hearing. The Commission pointed out that in *New South Media*, this Court had reversed a Commission order that ostensibly designated a group of licenses for renewal hearings, but actually had the effect of deferring their renewal applications, thus shielding them from competitors while taking no genuine action. Here, the Commission noted the Faith Center renewal application was not simply deferred: Faith Center actively sought distress sale purchasers throughout the course of the proceeding. *MO&O* at 4-5. J.A. I, 4-5.

The Commission then balanced the interests to be served by immediately commencing a comparative proceeding against the interests to be served by allowing Faith Center one last chance to consummate a distress sale:

A successful assignment of Station WHCT-TV's license pursuant to our distress sale policy would result in the rapid conclusion of this renewal proceeding, would swiftly end Faith Center's tenure as a licensee of this station and provide residents of the station's service area with a new licensee whose qualifications are not in doubt, would advance our important policy of increasing diversity of programming and ownership in the broadcast industry by providing for minority ownership and control of this station, and would avoid a lengthy and expensive comparative renewal proceeding.

*MO&O* at 5. J.A. I, 5. The Commission, therefore, determined to approve the Astroline assignment, but if that transaction were not consummated, the Commission de-

clared its intention to open the proceeding promptly to competing applicants.<sup>7</sup> *MO&O* at 5, 10. J.A. I, 5, 10.

Unlike the two previous distress sale candidates, Astroline succeeded in consummating the assignment on January 23, 1985. J.A. IV, 1064. In the meantime, SBH sought review of the Commission's order in this Court.

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<sup>7</sup>The Commission rejected SBH's arguments that the distress sale program represented unconstitutional reverse discrimination, and that Astroline failed to qualify as a minority purchaser under the distress sale procedure. *MO&O* at 6-8. J.A. I, 6-8.

## SUMMARY OF ARGUMENT

I. SBH had no right under *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945) to compel the Commission to conduct a comparative hearing. The *Ashbacker* doctrine does not apply to this case because SBH sought to interject an untimely competing application in the middle of a properly authorized noncomparative renewal proceeding in which Faith Center was actively attempting to consummate a distress sale of its license. Thus, no "window" for competing applications existed on December 2, 1983 when SBH made its filing and the Commission did not abuse its discretion by refusing to accept SBH's untimely application.

II. The Commission's decision is entirely consistent with this Court's decision in *New South Media Corp. v. FCC*, 685 F.2d 708 (D.C. Cir. 1982) ("*New South Media*"). Unlike the Commission decision in *New South Media*, the decision in this case brought the protracted and burdensome license renewal proceeding to a prompt conclusion, expeditiously removed an unqualified licensee from the air, introduced a new, exceptionally qualified licensee for the Hartford area, and promoted the public interest by increasing diversity of program content through fostering the minority ownership of broadcast facilities.

III. The Commission had the authority and discretion to balance competing public policy considerations against SBH's claimed right to a comparative hearing. The balance the Commission struck was reasonable. The Commission reasonably concluded that diversification of media control through the promotion of minority ownership, replacing Faith Center with a new licensee of unquestioned qualifications, and ending a lengthy and costly proceeding, outweighed the interests served by commencing a comparative renewal proceeding. The Court should defer to the Commission's expertise and not disturb its decision unless it is

arbitrary and capricious. The Court need not address SBH's claim that the Commission's distress sale program is unconstitutional, a claim that is in any event without merit because the program does not commit reverse discrimination.

IV. Astroline, the current licensee for WHCT-TV, qualifies under the Commission's distress sale policy as a company with "significant minority involvement." *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 F.C.C.2d 979 (1978), as revised, 92 F.C.C.2d 849 (1982). Astroline satisfies every criterion of the recently revised distress sale policy; SBH cites no probative evidence to the contrary and bases its claims on speculation deduced largely from evidence outside the record in this proceeding.

V. SBH's claims that the proceeding was tainted by irregularities have no support in the record. SBH's allegations of prohibited *ex parte* presentations are wholly unfounded and provide no basis upon which to reverse the Commission's action.

## ARGUMENT

### I. SBH HAD NO RIGHT TO COMPARATIVE CONSIDERATION WITH FAITH CENTER.

SBH's claim is founded on the premise that, under *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945), it had an absolute statutory right to a comparative hearing against Faith Center. SBH has no such right. SBH's application arrived in the middle of a properly initiated noncomparative renewal proceeding to determine whether Faith Center was qualified to hold the license for WHCT-TV. There was no "window" open for competing applications on December 2, 1983, the date SBH filed its application. The Commission's interpretation of its own rules and procedural orders, an interpretation that this Court has repeatedly held deserves judicial deference, does not allow for such applications.

#### A. The Faith Center proceeding complied in all respects with the Commission's specific procedures regulating renewal proceedings.

In accord with the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. §§ 151 *et seq.* (1982), the Commission has provided specific procedures for processing renewal applications. A licensee must file a renewal application "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed . . ." 47 C.F.R. § 73.3539(a)(1984). An application for a new broadcast station license, which is mutually exclusive with an application for renewal of an existing station, must be filed by the end of the first day of the last full calendar month of the expiring license term. 47 C.F.R. § 73.3516(e)(1984). Section 73.3516(e) of the Commission's Rules is referred to as the "cut-off" rule. *See City of Angels Broadcasting, Inc. v. FCC*, 745 F.2d 656, 662 (D.C. Cir. 1984) (approving application of the cut-off rule). The cut-off rule provides for only a three-month "window" during which competing applica-

tions may be filed against renewal applications and prohibits acceptance of mutually exclusive applications at any other time.<sup>8</sup>

No new "window" opens, however, when a licensee is involved in renewal hearings that extend beyond a normal license renewal period, because the licensee is not required to file any further renewal application until the hearing is terminated.

It has been long standing Commission policy that, when an application for renewal of license is designated for hearing, the applicant is not required to file another renewal application for the station until completion of the hearing and the issuance of a final decision on the application . . .

*Committee for Open Media v. FCC*, 543 F.2d 861, 864 n.15 (D.C. Cir. 1976), *quoting Chronicle Broadcasting Co.*, 41 F.C.C.2d 14, 16 (1973).

The Communications Act anticipates that protracted proceedings may indirectly result in extending a license beyond its normal expiration date. 47 U.S.C. § 307(c)(1982). The only time restriction imposed by the Communications Act is a limitation on the period for which the Commission itself may grant a license. *Id.* Courts consistently have held that this limitation is on the Commission's award of a license and not on the duration of the licensing proceeding itself, for:

<sup>8</sup>"The cut-off rule basically serves two purposes. First, it advances the interest of administrative finality: 'There must be some point in time when the Commission can close the door to new parties to a competitive hearing or, at least hypothetically, no licenses could ever be granted.' . . . Second, it aids timely broadcast applicants by granting them a 'protected status' that allows them to prepare for what often will be an expensive and time-consuming contest, fully aware of the competitors they will be facing." *City of Angels Broadcasting, Inc.*, 745 F.2d at 663 (citations omitted).

'[p]ending any hearing and final decision on' a renewal application 'and the disposition of any petition for hearing . . . the Commission shall continue such license in effect'—obviously, beyond the maximum . . . term for which the Commission could award it, if necessary. Thus Congress made specific provision for licenses involved in the renewal process, and unambiguously decreed that they be maintained in operation until 'final decision' on the question of renewal.

. . . Moreover, [Section 307(d)] requires licensees to file renewal applications only '[u]pon the expiration of [a] license.'

*Committee for Open Media v. FCC*, 543 F.2d at 866-67 (quoting 47 U.S.C. § 307(d)).

In 1980, when Faith Center's license came due for renewal, the Commission designated its license for a noncomparative renewal hearing. Faith Center thus did not need to file a supplemental renewal application until the hearing was resolved. At the same time, the Commission authorized Faith Center to seek a qualified minority purchaser to whom its license could be assigned under the terms of the Commission's distress sale policy. *Faith Center, Inc.*, 83 F.C.C.2d 401 (1980); see also *Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 F.C.C.2d 979 (1978). Unless the Commission terminated the renewal hearing and required Faith Center to file a supplemental renewal application, no "window" for competing applications would open in the normal course of the proceeding, as that course is defined by the Communications Act and this Court's decision in *Committee for Open Media*. There was thus no "window" open for competing applicants when SBH filed its application on December 2, 1983, and SBH had no statutory right under *Ashbacker* to transform the noncom-

parative hearing then in progress into a comparative hearing.

**B. SBH's arguments that a "window" for competing applicants opened in December 1983 are groundless.**

Through an ingenious—but specious—argument, SBH attempts to bootstrap its way into the status of a comparative applicant with full *Ashbacker* rights. This argument is not identified as such in SBH's brief; rather, SBH's pivotal assertion is imbedded in its description of what it calls "The Administrative Background." Brief of Appellant Shurberg Broadcasting of Hartford, Inc. ("SBH Br.") 4.

On September 30, 1983, the Commission authorized the second of Faith Center's three attempts at a distress sale, to Interstate Media Corporation ("IMC"). *In re Application of Faith Center, Inc.*, 54 Rad. Reg. (P&F)2d 1286 (1983). In approving that distress sale, the Commission pronounced the proceeding "terminated" (*id.* at 1290) but subject to two conditions subsequent, both of which were essential:

[W]e shall grant Faith's current Petition for Special Relief, subject to the conditions that IMC is found fully qualified to be a Commission licensee as a result of the Mass Media Bureau's review of the assignment application, and that the contemplated assignment is in fact consummated within 90 days of the Bureau's grant of the assignment application becoming final. *Should either of these conditions not be met, this proceeding will return to its status prior to the filing of Faith's Petition for Special Relief.*

*Id.* at 1287 (emphasis added). Seizing on the word "terminated," and ignoring the fact that the conditions subsequent were *not* fulfilled—IMC did *not* complete the assignment—SBH asserts:



The "window" for competing applications for Connecticut broadcast licensees opened on December 1, 1983. As of that date the Faith Center/IMC application was still pending, and the Station WHCT-TV "hearing" had been terminated. SBH filed its competing application on December 2, 1983, with the understanding that it would be entitled to comparative consideration against Faith Center or IMC, as well as any other applicant which might file during the three-month "open window" period.

SBH Br. 5-6.

But contrary to SBH's claim, the hearing had not been "terminated" and no window opened to receive its application. In its *Clarification of Distress Sale Policy* 44 Rad. Reg. (P&F)2d 479 (1978), (*Clarification*) the Commission expressly anticipated that assignments pursuant to this policy would not always be achieved: "In the event a licensee's exploration of (or application for) distress sale relief is unsuccessful, . . . the *suspended* qualification hearing will be resumed." *Id.* at 480 n.2 (emphasis added). At no point in a distress sale proceeding, however, is the hearing status of an applicant's renewal application terminated in order to open the way for competing applicants. If such were the case, the possibility of resuming the qualifications hearing would be foreclosed, even if the proposed sale were to prove unsuccessful. Therefore, the Commission's conditional grant of authority to assign a license under the distress sale procedure does not allow for competing applications pending the outcome of the conditions.

Once a renewal application is designated for a noncomparative hearing on basic qualifications issues and a distress sale is authorized, the proceeding is simply suspended—not terminated—until the distress sale proceeding is completed

or the hearing resumes and the issues designated in that proceeding are resolved. *See Clarification* at 480.

Having staked its claim on a nonexistent "window," SBH then maintains that the pending Faith Center renewal proceeding could not justify rejection of SBH's application. SBH emphasizes that the Commission never reached the merits of Faith Center's renewal application (SBH Br. 18-21), arguing, in essence, that the Commission could not exclude SBH from the proceeding unless Faith Center's qualifications were being considered in an actual hearing.

SBH's argument is circular. By the express terms of the Commission's distress sale procedure, the distress sale option is available only to licensees who are *not* yet involved in renewal hearings. "[W]e will permit licensees whose licenses have been designated for revocation hearing, or whose renewal applications have been designated for hearing on basic qualification issues, *but before the hearing is initiated*, to transfer or assign their licenses at a 'distress sale' price to applicants with a significant minority ownership interest . . ." *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 F.C.C.2d 979, 983 (1978) (emphasis added; footnote omitted). The Commission set this restriction for strong reasons of policy that have been recognized by this Court:

The imposition of this limitation on the exception's availability will prevent a licensee from proceeding into the hearings, evaluating the evidence against him, and deciding on that basis whether to seek out a minority purchaser. In this manner the Commission believes that its goal of increased minority ownership can be promoted at a minimum cost to deterrence.

*Stereo Broadcasters, Inc. v. FCC*, 652 F.2d 1026, 1028 (D.C. Cir. 1981). SBH's argument is thus perfectly circular: if a

renewal hearing on the merits had commenced, Faith Center would never have been eligible for the distress sale program in the first place.

Moreover, the distress sale procedure is intended to substitute for a renewal hearing by eliminating any need for it. SBH mischaracterizes the Faith Center proceeding as lacking any genuine administrative activity leading to a resolution. SBH Br. 18-20. There was in fact considerable activity in the Faith Center docket directed at its attempts to effect an acceptable distress sale. The Commission and its staff closely supervised Faith Center's attempts to achieve a distress sale throughout the proceeding.<sup>9</sup>

SBH unfairly attempts to tar the Commission with the charge of being hostile to competing license applicants. In fact, SBH itself was a latecomer to a proceeding in which—despite ample opportunity—no competing applications had ever been tendered. The Commission began its noncomparative renewal proceeding in 1980 and authorized Faith Center to seek a distress purchaser. Two such purchasers

<sup>9</sup>See *Faith Center, Inc.*, FCC 81-594, released Dec. 23, 1981 (MO&O granting Faith Center's first Petition for Special Relief and disposing of other petitions), J.A. I, 241; *Faith Center, Inc.*, 54 Rad. Reg. (P&F)2d 1286 (1983) (MO&O granting Faith Center's second Petition for Special Relief and referring to numerous pleadings filed by interested parties, including the Mass Media Bureau, during 1981-1983), J.A. II, 380; *Faith Center, Inc.*, 55 Rad. Rep. (P&F)2d 41 (MMB 1984) (order granting the assignment of license of WHCT-TV to Interstate Media Corporation and denying Mr. Shurberg's objections), J.A. II, 418; when the assignment to IMC was unable to be consummated, the suspended Faith Center hearing was resumed, see FCC 84M-1834, J.A. II, 430; see also FCC 84M-2319, FCC 84M-2473 and FCC 84M-2955, J.A. II, 473-74, 567. The brief of Appellee, Federal Communications Commission, discusses the actions taken at the Commission throughout this renewal/distress sale proceeding. See Commission Br. 5-10.

came forward, in 1981 and 1982, but no else one sought to interject a competing application. Only in December 1983, after repeated opportunities for intervention had expired, did SBH appear with its competing application.

**C. The FCC acted within its administrative discretion in continuing Faith Center's noncomparative renewal proceeding pending consummation of its distress sale to Astroline.**

The FCC has wide discretion in designing its own procedures. "Section 4(j) of the Communications Act of 1934, 47 U.S.C. § 154(j), proclaims that the FCC 'may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.'" *City of Angels Broadcasting, Inc. v. FCC*, 745 F.2d 656, 664 (D.C. Cir. 1984).<sup>10</sup>

In *City of Angels*, this Court upheld the Commission's denial of an applicant's request to intervene in an ongoing comparative proceeding. Much like SBH in this case, the applicant requested that its mutually exclusive application be accepted and given comparative consideration along with other comparative applicants long after the "window" for filing competing applications had closed. Yet, in contending that its 1983 application should have been accepted for filing, SBH goes even farther than the applicant in *City of Angels*—it contends that an ongoing noncomparative proceeding should thereby be transformed into a comparative proceeding so that SBH may be given comparative consideration.

<sup>10</sup>See, e.g., *MCI Telecommunications Corp. v. FCC*, 712 F.2d 517, 533 (D.C. Cir. 1983); *Western Union Telegraph Co. v. FCC*, 665 F.2d 1112, 1121 & n.13 (D.C. Cir. 1981); *Nader v. FCC*, 520 F.2d 182, 195-97 (D.C. Cir. 1975).

SBH's argument would require this Court to overturn the FCC's interpretation of its own September 30, 1983 order. In its *Memorandum Opinion and Order* ("MO&O") under review in this case, the Commission clearly interpreted its prior order as not granting Faith Center's license renewal except on the condition that a distress sale was actually consummated. MO&O at 3. J.A. I, 3. The Commission stated: "There was no requirement that Faith file a renewal application for the period of 1984 through 1989, since Faith's 1977 renewal application was and remains in hearing status and competing applications cannot be filed until the proceeding has been terminated." *Id.* J.A. I, 3.

This Court's review of the Commission's construction of its own order is limited. The Court may not overturn an agency's interpretation unless there are compelling indications that it is wrong. *City of Angels*, 745 F.2d at 661. Whether there may be other reasonable interpretations of an order in addition to that expressed by the Commission is irrelevant. This court should examine only whether the Commission's interpretation was reasonable under the circumstances. If it was, then the Commission's interpretation should be upheld. *See also Tele-Media Corp. v. FCC*, 697 F.2d 402, 420 (D.C. Cir. 1983) (agency's interpretation of its own rules given "controlling weight" unless "plainly erroneous").

In summary, if the Commission's interpretation of its order is upheld, as it should be, then Faith Center's renewal proceeding was a noncomparative proceeding from its inception. The Commission followed established procedures governing the renewal process. SBH, in effect, requests a waiver of the Commission's rules. Whether to transform the proceeding into a comparative proceeding was a decision left to the discretion of the Commission which, for the reasons fully explained *infra* in Sections II and III, denied

SBH's request. The Commission's decision was consistent with both statutory and regulatory law, and therefore must be affirmed.<sup>11</sup>

## II. THE COMMISSION'S ORDER IS CONSISTENT WITH THIS COURT'S DECISION IN NEW SOUTH MEDIA.

SBH contends that this Court's decision in *New South Media Corp. v. FCC*, 685 F.2d 708 (D.C. Cir. 1982) deprived the Commission of the discretion to do anything except halt the Faith Center distress sale proceeding and commence a comparative proceeding whose only participants would be SBH and Faith Center.<sup>12</sup> To the contrary, the Commission chose a course of action that was entirely consistent with the *New South Media* decision, and SBH's reliance on that case is misplaced.

In *New South Media*, the Commission reopened prior license renewals for 13 RKO broadcast stations and proposed to adjudicate RKO's qualifications to retain its licenses in a single noncomparative renewal proceeding. All competing applicants for the 13 licenses were to be kept at bay until the noncomparative proceeding ran its course, whenever that might be. "The Commission has placed a

<sup>11</sup>The Court's function in reviewing the Commission's order and its interpretation thereof, "is not to impose [the court's] standards of reasonableness upon the Commission, but rather to ensure that the Commission's order is supported by substantial record evidence and is neither arbitrary, capricious, nor an abuse of discretion." *Nader v. FCC*, 520 F.2d 182, 192 (D.C. Cir. 1975), citing *Goodman v. Public Service Commission*, 497 F.2d 661 (D.C. Cir. 1974).

<sup>12</sup>"The Commission cannot seriously argue that . . . *New South Media* did not compel it to accept and consider SBH's application in a consolidated comparative hearing with that of Faith Center." SBH Br. 22. "[T]he Commission would again ignore SBH's right to *sole comparative status* as against Faith Center. . . ." SBH Br. 46 (all emphasis added).

freeze on their [competing] applications, and it is unclear when the freeze would thaw." 685 F.2d at 717. This Court reversed the Commission because it had "not adequately accounted for an action destined to prolong by months and in some cases even years licensee RKO's immunity from competitive challenge and comparative evaluation." *Id.* at 715.

The differences between the case under review and *New South Media* are far more significant than any similarities. At the most elementary level, this case does not involve an indeterminate freeze on competing applications. Faith Center had been unable to consummate two previous distress sales, and the Commission ruled that if the assignment to Astroline also failed, Faith Center would be promptly required to file a supplemental renewal application, thus opening the way for any competitor who wished to file an application. *MO&O* at 6. J.A. I, 6. The Commission's order thus had two possible outcomes, both of which would have activated the normal comparative hearing process—competing applications would be accepted immediately (if the Astroline assignment fell through) or on the ordinary license renewal cycle (if Astroline consummated the purchase). In no event would the Faith Center license have been relegated to the indefinite limbo that this Court found unacceptable in *New South Media*.

Second, a distress sale proceeding is a *bona fide* renewal proceeding. A successful distress sale proceeding results in the renewal of the license in question, not for the incumbent's own use but solely for the purpose of assigning the renewed license to a qualified minority purchaser. In *New South Media*, by contrast, the renewal "hearings" at issue were hearings in name only, whose only effect was to disenfranchise competing applicants who had *timely* filed their applications ("... no renewal hearing ongoing at the Com-

mission, no evidence-taking underway, no proceeding in midstream or even launched." 685 F.2d at 716). A distress sale renews a license and serves the public interest just as surely as a comparative hearing does—by divesting the renewed license from an incumbent whose qualifications are in serious doubt and by assigning that renewed license in a manner that increases diversity of programming and ownership.

Also, the order under review did not insulate a dubious incumbent from license competition. In *New South Media*, RKO reaped an undeserved benefit because the indefinite freeze on competing applications allowed it to retain its licenses, free from challenge, for extended terms. Here, the Commission's order removed the questionable licensee as quickly and directly as possible. The order under review did not permit Faith Center to sit on its license; the order required Faith Center to give it up.

Moreover, the *New South Media* decision gives powerful (even decisive) weight to the public interest in "license competition that normally propels a licensee to better broadcasting." 685 F.2d at 716, quoting *Committee for Open Media v. FCC*, 543 F.2d 861, 873 (D.C. Cir. 1976). But no one could reasonably expect that Faith Center would be "propelled" to better performance. Unlike the RKO licensees in *New South Media*, who were vigorously defending their licenses and wanted to keep them, Faith Center, by choosing a distress sale, acknowledged that it had no realistic hope nor any intention of retaining its license. Indeed, SBH itself refers to "the general agreement that Faith Center should not remain a licensee." SBH Br. 19. The need for a competitive spur to the incumbent that weighed heavily in the Court's decision in *New South Media* is therefore absent in the case under review.

Finally, as the Commission's brief in this case fully explains (at 22-28), *New South Media* did not involve the vital competing public policy of diversification of media ownership through the encouragement of minority involvement in broadcasting. The Commission defended its order in *New South Media* primarily on grounds of administrative convenience. Unlike this case, the *New South Media* order could not be justified as directly promoting a policy—diversification of media control—at the core of the Commission's public interest responsibilities.

In summary, in contrast to *New South Media*, in the order under review the Commission did not put an indefinite "freeze" on competing applications, it did not allow the license renewal proceeding to stagnate, it did not perpetuate Faith Center's tenure, and it did no violence to the principle of applying a competitive spur to incumbents' performance. In simplest terms, the Commission suffered reversal in *New South Media* because its orders indefinitely avoided disposing of the question of license renewal. Here, the Commission's order disposed of the license renewal in the quickest and most decisive manner available. *New South Media* therefore provides no support for SBH.

**III. THE COMMISSION MADE A RATIONAL  
DETERMINATION TO ADVANCE THE PUBLIC  
INTEREST IN BROADCASTING DIVERSITY THAT  
SHOULD NOT BE DISTURBED BY A REVIEWING  
COURT.**

As we have demonstrated in Sections I and II, SBH possessed no *Ashbacker* right to transform this distress sale proceeding into a comparative proceeding. At best, SBH's argument amounts to a claim that the Commission abused its discretion by balancing a comparative hearing against competing considerations of public policy. This process of rational balancing, by which the Commission manages its

own docket and pursues its statutory mandate, is precisely the kind of expert agency determination that reviewing courts are properly reluctant to overturn.

SBH contends that the Commission's order should be overturned because (a) the Commission could not lawfully balance any other interests against SBH's claimed *Ashbacker* interest in a comparative hearing, and (b) the Commission's distress sale policy constitutes unlawful reverse discrimination and therefore should not have weighed in the balance. Both of these contentions are erroneous.

**A. The Commission struck a reasonable balance between  
the interests served by a comparative hearing and the  
interests in broadcasting diversity served by the dis-  
tress sale procedure.**

In contending that the Commission should have halted the Faith Center distress sale proceeding and commenced a comparative hearing in its stead, SBH isolates comparative hearings from the public interest goals that such hearings are intended to serve. A comparative hearing is only one means of achieving the public interest goals at the root of the Communications Act.

"[T]he 'public interest' standard necessarily invites reference to First Amendment principles," *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 122, 93 S. Ct. 2080, 2096, 36 L.Ed.2d 772 (1973), and, in particular, to the First Amendment goal of achieving "the widest possible dissemination of information from diverse and antagonistic sources," *Associated Press v. United States*, [326 U.S. 1, 20 (1945)].

*FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 795 (1978).

The Commission crystallized those goals in its *Policy Statement on Comparative Broadcast Hearings*, 1 F.C.C.2d 393 (1965), which accorded major significance to promoting diversity of broadcast expression through diversity of broadcast ownership. "Diversification of control of the media of mass communication is elevated in the 1965 Policy Statement to a factor of primary significance . . ." *Citizens Communication Center v. FCC*, 447 F.2d 1201, 1207 (D.C. Cir. 1971).

In 1973, this Court instructed the Commission that the public interest in diversification should be implemented by increasing minority involvement in broadcast media ownership.

It is consistent with the primary objective of maximum diversification of ownership of mass communications media for the Commission in a comparative license proceeding to afford favorable consideration to an applicant who, not as a mere token, but in good faith as broadening community representation, gives a local minority group media entrepreneurship.

*TV 9, Inc. v. FCC*, 495 F.2d 929, 937 (D.C. Cir. 1973) (footnote omitted).

The dearth of minority broadcast owners has been a longstanding obstacle to the public interest goal of diversification. "The extreme underrepresentation of minorities in the ownership of mass media broadcast facilities has been exhaustively documented and no party here questions it." *West Michigan Broadcasting Co. v. FCC*, 735 F.2d 601, 603 n.5 (D.C. Cir. 1984), cert. denied, 101 S. Ct. 1392 (1985). With this Court's endorsement and encouragement, the Commission has interpreted the public policy favoring diversity in broadcast ownership to mean that the Commission and the Congress have all concluded that promotion of minority

owned broadcast media facilities, where the minority owner will be fully involved in broadcast management, is an important public policy objective within the FCC's 'public interest' mandate." *Id.* at 607.<sup>13</sup>

The Commission adopted the distress sale procedure in 1978 as an alternative to the lengthy and costly comparative hearing process, to be applied in limited instances where a distress sale would directly promote the public interest by diversifying media ownership. *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 F.C.C.2d 979, 983 (1978). Licensees who are apprehensive that their licenses might not be renewed after a full evidentiary hearing are encouraged to assign their licenses to companies with significant minority involvement. The distress sale procedure has a proven and unchallenged record of success. In the first four years of the policy, 27 licenses were assigned to minority owners, thus "contribut[ing] significantly to increased minority ownership in broadcasting." *Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, 92 F.C.C.2d 849, 852 (1982).

Despite the established, salutary public policies served by the distress sale proceeding, SBH contends that the Commission was obligated to bring that proceeding to an immediate halt in order to accommodate SBH's demand for a comparative hearing with Faith Center.<sup>14</sup> SBH argues that

<sup>13</sup>*Accord, Garrett v. FCC*, 513 F.2d 1056 (D.C. Cir. 1975); *TV 9, Inc. v. FCC*, 495 F.2d 929 (D.C. Cir. 1973); *Citizens Communications Center v. FCC*, 447 F.2d at 1213 n.36 (promotion of minority ownership serves the public interest).

<sup>14</sup>SBH argues that the mere filing of its application automatically prevented the Commission from continuing with the distress sale proceeding already in progress. SBH relies on a footnote to the Commission's *Clarification of Distress Sale Policy*, 44 Rad. Reg. (P&F)2d 479, 480 n.3 (1980): "Distress sales are an option only

the mere filing of its application mandates a comparative hearing and outweighs, as a matter of law, not only considerations of diversification of programming and ownership, but also the other interests cited by the Commission in its *MO&O*, including "the rapid conclusion of this renewal proceeding," the "swift[] end [of] Faith Center's tenure as a licensee of this station," providing "residents of the station's service area with a new licensee whose qualifications are not in doubt," and the avoidance of "a lengthy and expensive comparative renewal proceeding." *MO&O* at 5. J.A. I, 5.

SBH maintains that it was "unlawful" for the Commission to balance SBH's claimed *Ashbacker* right to comparative

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where no competing applicant is involved in the hearing. In comparative hearings the *Ashbacker* rights of the challenger to a full administrative comparison with the incumbent properly preclude departure of the existing licensee from the administrative process."

SBH misinterprets the Commission's *Clarification*, which was issued to cope with the particular and limited problem of licensees who were already involved in renewal hearings when the distress sale policy was promulgated. The Commission gave such licensees an opportunity to invoke the distress sale procedure, but only if no competing applicant was already involved in the hearing, *i.e.*, only if no comparative hearing was already underway. *Clarification*, 44 Rad. Reg. (P&F)2d at 479-480. Faith Center was in a noncomparative renewal proceeding when SBH attempted to file its competing application. Moreover, the Commission had authorized Faith Center to invoke the distress sale procedure in 1981, long before SBH appeared on the scene. The Commission thus did not authorize a distress sale proceeding in the face of SBH's competing application. Rather, SBH has tried to use an ostensible competing application as a vehicle to interrupt a distress sale proceeding already authorized and in progress. Most fundamentally, the *Clarification* was intended to expand the opportunities for distress sales by accommodating the transitional group of licensees. But SBH maintains the *Clarification* was meant to *narrow* opportunities to effect distress sales—an interpretation that is plainly wrong.

consideration against any and all other policy objectives. SBH Br. 23-24. To the contrary, this Court has affirmed the Commission's power to balance its own well-founded policies against the asserted *Ashbacker* rights of applicants for comparative hearings. In *WLVA, Inc. (WLVA-TV), Lynchburg, Va. v. FCC*, 459 F.2d 1286 (D.C. Cir. 1972), this Court affirmed the Commission's refusal to conduct a comparative hearing on the basis of "the overriding impact of the Commission's long-standing UHF protection policy," under which VHF stations were denied permission to enlarge their coverage area if that enlargement would be detrimental to UHF development. *Id.* at 1303. "[A]lthough the Commission's reliance on its UHF protection policy in this context may to some extent be viewed as a limitation on *Ashbacker*, such a limitation is clearly reasonable." *Id.* at 1304.<sup>16</sup>

Noting that *Ashbacker* itself recognized the Commission's discretion to limit the filing rights of competing applicants (326 U.S. at 333 n.9), the Commission has very recently stated:

The Commission traditionally has balanced an applicant's right to a comparative hearing with the public's interest in having frequencies occupied and operating. . . . The Commission has exercised this discretion over the years and limited the filing rights of competing applicants in order to provide certainty, to avoid disruptions in the processing procedures for high demand

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<sup>16</sup>SBH appears to take the position that the Commission may refuse to entertain a comparative hearing application *only* if the application would interfere with the administration of a proceeding already in progress. SBH Br. 12. This interpretation is much too narrow: as *WLVA, Inc.* makes clear, the Commission has the authority to weigh other policies in addition to mere administrative convenience.

services or to further other compelling public interest objectives.

*In the Matter of Secs. 73.3572 and 73.3573 Relating to Processing of FM and TV Broadcast Applications*, MM Dkt. No. 84-750 (May 6, 1985) at 6-7.

SBH argues principally that comparative hearings provide a competitive "spur" by furnishing "additional incentive to existing licensees to offer optimal service to the public." SBH Br. 10. But a comparative hearing would not serve as a "spur" to Faith Center. Only a licensee who wishes to remain a licensee can be "spurred" to better performance. See p. 25, *supra*. When the licensee wishes to exit, there is no one to be "spurred," and a comparative hearing for that purpose is an empty formality.<sup>16</sup>

Moreover, SBH's self-serving enthusiasm for the principles of comparative hearings is disingenuous. SBH demands a "right to sole comparative status as against Faith Center" and objects strenuously to the Commission's "re-open[ing] of the window to let in any number of other competing applicants," all of whom SBH dismisses as "opportunistic latecomers." SBH Br. 46. SBH's idea of a comparative hearing is evidently a private affair in which SBH would square off against Faith Center and no one else, despite SBH's acknowledgement of "the general agreement that Faith Center should not remain a licensee." SBH Br. 19.

<sup>16</sup>As the Supreme Court has observed, it is not at all clear that the public interest would be well served by a reluctant licensee. *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 812-813 (1978). The Court quoted with evident approval the Commission's brief, which stated: "[I]f the Commission were to force broadcasters to stay in business against their will, the service provided under such circumstances, albeit continuous, might well not be worth preserving." *Id.* at 813.

SBH champions comparative hearings, while at the same time insisting on the right to pick and choose among the parties with whom it would compete.

Finally, in Section 310(d) of the Federal Communications Act, Congress directed that comparative considerations have no role in assignments. In acting on an assignment application, "the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee." 47 U.S.C. § 310(d). An assignment, whether in the context of a distress sale or otherwise,<sup>17</sup> is intended by Congress and the Commission to be a consensual transaction, in which the Commission satisfies itself that the assignee is qualified to receive the license but does not otherwise concern itself with whether the assignment is to the party the Commission might have chosen. SBH sought to inject a comparative proceeding into an assignment, where Con-

<sup>17</sup>Generally, the Commission will disapprove an assignment, even to an otherwise qualified assignee, if the qualifications of the present holder of the license are in doubt. See, e.g., *LaRose v. FCC*, 494 F.2d 1145, 1147-1148 (D.C. Cir. 1974) (restating Commission practice that license renewal must be granted prior to assignment). This general policy is flexible, and is relaxed to accommodate overriding public policy considerations. Distress sales represent only one exception to this rule where strong competing public interests are present. Termination of protracted proceedings and restoration of service are other interests that have justified assignments even without a determination of the assignor's qualifications. See, e.g., *George E. Cameron, Jr. Communications (KROQ)*, 46 Rad. Reg. (P&F) 825, 828 (1984) (approval of assignment "will terminate these protracted and burdensome proceedings and permit the stations to continue normal operations unencumbered by the prospect of further costly and time consuming litigation.").



gress has declared that comparative considerations do not apply.

In short, the Commission balanced the benefits of the distress sale proceeding against SBH's argument to halt that proceeding and commence an exclusive comparative license renewal proceeding. The Commission struck a manifestly rational balance and decided to allow Faith Center the opportunity to complete a distress sale to Astroline (a qualified minority purchaser), but to make that the last chance for a distress sale before opening Faith Center's license to a full comparative proceeding. "The Commission's implementation of the public-interest standard, when based on a rational weighing of competing policies, is not to be set aside by the Court of Appeals, for 'the weighing of policies under the "public interest" standard is a task that Congress has delegated to the Commission in the first instance.'" *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 596 (1981), quoting *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. at 810.<sup>18</sup>

**B. SBH's attack on the constitutionality of the distress sale procedure is groundless.**

SBH devotes all of three pages of its brief to a backhanded and undeveloped claim that the distress sale program unconstitutionally discriminates against nonminorities. A constitutional question of this magnitude should not and need not be reached on the limited record available in this case. While the record is practically devoid of legal and factual support for SBH's claim of reverse discrimination, the gross underrepresentation of minorities in media ownership is a

<sup>18</sup>See also *NAACP v. FCC*, 682 F.2d 993, 1001 (D.C. Cir. 1982) (Commission must be given "leeway to balance the competing policy considerations and, with due regard to the record and its own expertise, choose an appropriate course of action.").

matter of undisputed judicial, administrative, and legislative recognition.

Courts should not address constitutional questions except in unavoidable circumstances. "There is no occasion to consider . . . constitutional questions unless their answers are indispensable to the disposition of the cause before us." *Stefanelli v. Minard*, 342 U.S. 117, 120 (1951) (Frankfurter, J.). As we have already demonstrated, SBH's claim that it was "statutorily entitled" (SBH Br. 31) to comparative consideration with Faith Center is based on SBH's erroneous interpretation of Section 309 of the Communications Act. SBH's erroneous statutory argument makes it unnecessary to reach its constitutional claim.

Moreover, SBH's constitutional arguments are based on factual and legal errors. SBH asserts that the distress sale program is unconstitutional because it "unquestionably *excluded* SBH from any effective consideration." SBH Br. 29 (emphasis in original). The distress sale program is of course designed to increase the number of minority-owned stations. But this is not a case in which the Commission has reserved certain channels or broadcast frequencies solely for minority owners and refused to entertain petitions of nonminorities for access to them. Interested parties, including rivals for the license in question, can oppose a licensee's election of the distress sale procedure, and they can oppose as well specific distress sale transactions when they are presented to the Commission for approval or disapproval. "A distress sale, contrary to the views of Faith . . . is a form of extraordinary relief and depends on the facts and circumstances of the individual petition. Although distress sales are generally granted, they are not a matter of right." *Faith Center, Inc.*, 82 F.C.C.2d 1, 35 (1980).<sup>19</sup>

<sup>19</sup>Indeed, the Commission denied distress sale treatment for two other television stations owned by Faith Center, and competitors filed applications for both of those licenses. *Faith Center, Inc.*, 82 F.C.C.2d 1 (1980), *recons. denied*, 86 F.C.C.2d 891 (1981).

In fact, the distress sale program is far less exclusionary of nonminorities than the "set-aside" program upheld by the Supreme Court in *Fullilove v. Klutznick*, 448 U.S. 448 (1980), which reserved for minority firms (subject to limited administrative waiver) 10 percent of federal funds for local public works projects. "It is not a constitutional defect in this program that it may disappoint the expectations of nonminority firms. When effectuating a limited and properly tailored remedy to cure the effects of prior discrimination, such a 'sharing of the burden' by innocent parties is not impermissible." *Id.* at 484 (Burger, C. J.).

SBH relies principally on *Firefighters Local Union No. 1784 v. Stotts*, 104 S. Ct. 2576 (1984), from which SBH infers that its claimed "statutorily entitled" rights may not be impaired unless the minority beneficiary of the program "has been the specific victim of discrimination which has barred him or her from broadcast ownership." SBH Br. 31. But *Stotts* is wholly inapplicable, as SBH itself evidently acknowledges when it characterizes its own argument as based merely on a "suggestion implicit" in that decision. SBH Br. 31.

*Stotts* was purely a statutory decision—not a constitutional one—interpreting the courts' remedial power under Title VII of the Civil Rights Act of 1964. Title VII limits a court's ability to impair employee rights under a *bona fide* seniority system to instances of individual victims of discrimination, and not merely to members of a disadvantaged class. 104 S. Ct. at 2588. Neither Title VII nor seniority systems are involved in this case. *Stotts* rests on Title VII's particular statutory protection for seniority systems against court-compelled remedial orders; it has absolutely nothing to do with the constitutional standards for a volun-

tary procedure such as the Commission's distress sale program.<sup>20</sup>

Moreover, the Commission is justifiably concerned with the underrepresentation of minorities in broadcasting, regardless of the cause of that underrepresentation. "As this Commission, the courts, and the Congress have recognized, there is a critical underrepresentation of minorities in broadcast ownership, and full minority participation in the ownership and management of broadcast facilities is essential to realize the fundamental goals of programming diversity and diversification of ownership which are at the heart

<sup>20</sup>In fact, the *Stotts* court expressly noted that its decision did not reach the question of what an employer might lawfully adopt as a voluntary affirmative action program. *Id.* at 2590. Subsequent lower court decisions have treated *Stotts* as inapplicable to voluntary affirmative action programs not imposed by a court under the remedial powers of Title VII. *Wygant v. Jackson Board of Education*, Jackson, Mich., 746 F.2d 1152, 1157-58 (6th Cir. 1984); *Kromnick v. School District of Philadelphia*, 739 F.2d 894, 911 (3d Cir. 1984); *Britton v. South Bend Community School Corp.*, 593 F. Supp. 1223, 1230-31 (N.D. Ind. 1984).

Moreover, even in a Title VII case—which this case most certainly is not—the courts have interpreted *Stotts* as not imposing a requirement of actual discrimination.

Had the Court intended to radically change its interpretation of Title VII law so as to require a finding of actual discrimination in *any* affirmative action case, I believe it would have said so. In the absence of clearer authority, I decline to read such an expansive meaning into an opinion limited to a discussion of layoffs made in violation of a *bona fide* seniority system.

*Deveraux v. Geary*, 596 F. Supp. 1481, 1486 (D. Mass. 1984) (emphasis in original). Yet SBH erroneously contends that *Stotts* extends a requirement of actual discrimination *beyond* Title VII when the courts do not interpret *Stotts* as establishing such a requirement even *within* Title VII.

of the Communications Act and the First Amendment." *Waters Broadcasting Corp.*, 91 F.C.C.2d 1260, 1264 (1982), *aff'd sub nom. West Michigan Broadcasting Co. v. FCC*, 735 F.2d 601 (D.C. Cir. 1984) (footnote omitted).

Although there is ample evidence that discrimination has denied minorities ownership opportunities,<sup>21</sup> the Commission, which is charged to serve the public interest, has the authority and the duty to address itself to the problem of minority underrepresentation even if it were *not* the product of discrimination. The Commission acts within its proper role not only by seeking to do justice to the members of minority groups who have been victimized by discrimination or the effects of past discrimination, but also by seeking to benefit the public through the presentation of as wide as possible a range of programming and opinion.

This additional scope of the Commission's authority is apparent by comparison to *Fullilove v. Klutznick*, 448 U.S. 448 (1980), wherein the Court upheld a set-aside program—more restrictive of nonminorities than the distress sale procedure—solely to redress the economic injustices of past industrywide discrimination. Diversification of construction

<sup>21</sup>"Generations of discrimination have created a form of racial caste. In the view of the panelists a direct result of the general societal discrimination has been the underrepresentation of these minorities in the ownership of broadcast stations as well as other communications facilities." Federal Communications Commission Minority Ownership Taskforce, *Minority Ownership in Broadcasting* 7-8 (1978) (footnote omitted).

"The Conferees find that the effects of past inequities stemming from racial and ethnic discrimination have resulted in a severe underrepresentation of minorities in the media of mass communications . . ." H.R. Conf. Rep. No. 765, 97th Cong., 2d Sess., *reprinted in* 1982 U.S. Code Cong. & Ad. News 2287, *cited in West Michigan Broadcasting Co. v. FCC*, 735 F.2d at 613-614.

contractors on public works projects does not, however, serve an independent First Amendment interest. But diversification of the channels of expression manifestly does advance the policies of the First Amendment, in addition to redressing the effects of industrywide discrimination.

The Commission's remedial powers are thus broader than those of courts or agencies lacking the Commission's unique responsibilities. But SBH advances arguments that would confine the Commission more narrowly than other agencies—for example, the unfounded claim that a beneficiary of the distress sale policy must have been the "specific victim of discrimination which has barred him or her from broadcast ownership." SBH Br. 31. The distress sale procedure is a constitutional means toward a constitutional end, and SBH's arguments to the contrary are groundless. As noted above, however, the Court need not reach this issue; ample alternative grounds support affirmance of the Commission's order.

#### IV. ASTROLINE QUALIFIES FOR APPLICATION OF THE DISTRESS SALE PROCEDURE.

SBH argues that the record does not support Astroline's status as a "minority-controlled entity." SBH Br. 34-37.<sup>22</sup> To

<sup>22</sup>SBH is simply wrong in its claim that "[i]n order to invoke the 'distress sale' policy, a proposed assignee must be a minority-controlled entity." SBH Br. 34 (emphasis added). In 1982, the Commission clarified its distress sale policy for the express purpose of permitting limited partnerships in which there was "significant minority involvement"—but *not* necessarily control—to participate in the program. *Policy Statement and Notice of Proposed Rule Making*, 92 F.C.C.2d 849, 853-855 (1982). Nevertheless, Astroline is qualified for the program under any definition because Astroline is a minority-controlled entity. Its general manager, Mr. Ramirez, has legal and operational control of the partnership and the station. Astroline therefore clearly meets the Commission's criteria for significant minority involvement.

the contrary, Astroline is fully qualified as a minority purchaser, and SBH's arguments to the contrary are groundless.

In its *Policy Statement and Notice of Proposed Rule Making*, 92 F.C.C.2d 849 (1982), the Commission revised and clarified the criteria for participating as a purchaser in the distress sale program. The Commission declared that limited partnerships would be eligible for the program if (a) the general partner is a member of a minority group, and (b) the general partner owns more than a 20 percent interest in the broadcasting entity. *Id.* at 855. The Commission explained:

Limited partnerships are designed to encourage trade by uniting parties who possess capital to invest with parties who are willing to expend their energies and efforts actively running a business. Since complete control and management rests with the general partner, the limited partner's investment is akin to that of a corporate shareholder who has limited liability and lacks a voice in the operation of the enterprise.

*Id.* at 854 (footnotes omitted). It is undisputed that Astroline satisfies the literal terms of the Commission's test. Astroline is a limited partnership in which Richard Ramirez is a general partner. Mr. Ramirez, who is Hispanic (a defined minority group under the distress sale program), has a 21 percent ownership interest and a 70 per cent voting interest in the entity. Mr. Ramirez will be general manager of the station. *Petition for Special Relief of Faith Center, Inc.* at 3-4. J.A. II, 483-84.

SBH claims that Astroline's minority status is not *bona fide* because Mr. Ramirez did not contribute a pro rata share of his personal funds to capitalization of the partnership. SBH overlooks the very purpose of the distress sale pro-

gram: to help minority group members overcome the financial handicaps that have limited their ownership of broadcast properties. Recognizing that "financing has remained the single greatest obstacle' to minority entry into the telecommunications industry," the Commission issued its 1982 Policy Statement to increase minorities' "opportunities to attract investors in their enterprises, and thus secure financing." *Policy Statement and Notice of Proposed Rule Making*, 92 F.C.C.2d at 853.<sup>23</sup>

<sup>23</sup>In its brief, SBH asserts that it is qualified to be a Commission licensee. SBH Br. 18. This statement is erroneous for, by SBH's own admission, it is not financially qualified. SBH filed an affidavit with this court asserting that if SBH's Emergency Motion for Stay were denied, SBH would lose its "single source of financing" which is assertedly essential to the prosecution of SBH's application and its related activities before the Commission and the Court. *See* Affidavit of Alan Shurberg attached to SBH's Reply to Opposition to Emergency Motion for Stay at ¶ 3. The Court denied SBH's Emergency Motion for Stay on December 21, 1984 and, thus, SBH by its own admission became financially unqualified to be a Commission licensee.

SBH's financial qualifications have been suspect since it became involved in this proceeding. In its application filed on December 2, 1984 (*see* File No. BPCT-83120KF), SBH stated in Section III that its "Financial certification [is] to be supplied." For nearly two years, SBH has promised to provide financial information. To date, it has not done so and, in fact, has supplied additional information to this Court that raises additional questions concerning its financial status as a prospective licensee.

This Court has routinely held that financially unqualified applications cannot be granted. The Court has held that the Commission is not required to infer significant financial information from an incomplete application. *See Wadeco, Inc. v. FCC*, 628 F.2d 122, 128 (D.C. Cir. 1980); *WLOX Broadcasting Co. v. FCC*, 260 F.2d 712 (D.C. Cir. 1958). Thus, the Court should take note that SBH, by its own admission, is not a financially qualified applicant and, therefore, could not be granted the license.

Mr. Ramirez brings to the enterprise nine years' experience in the broadcast industry (Comments of Astroline in Support of Pet. for Special Relief at 1, J.A. III, 622), having served in senior management positions with a television station, two radio stations and a national radio network. Mr. Ramirez also dedicates his full time to the day-to-day operation of the station. He is the only principal in Astroline with the experience to operate a broadcast property. The members of the limited partnership supply only the station's financing, for which they will receive a return on their investment. The limited participants' willingness to invest their money while conferring managerial and voting control of the station upon Mr. Ramirez is exactly what the distress sale program is designed to encourage.

Moreover, the Commission's primary definition of control has always included complete managerial responsibility for the operation of the enterprise. "We have generally found 'control' to be in those who have authority to determine the basic policies of a station's operations, including programming, personnel and financial matters." *Policy Statement and Notice of Proposed Rule Making*, 92 F.C.C.2d at 855 n.30 (citation omitted). See also *William M. Bernard*, 44 Rad. Reg. (P&F)2d 525 (1978); *Anax Broadcasting*, 49 Rad. Reg. (P&F)2d 1598 (1981). Mr. Ramirez possesses this complete operational authority over the management of Astroline, and thus satisfies the basic test of control. Comments [of Astroline] in Response to Consol. Comments of SBH at 6-7.<sup>24</sup>

<sup>24</sup>SBH argues that Mr. Ramirez lacks complete control over the operations of Astroline because he regularly consults with the limited partners. SBH Br. 37. Assuming that the extra-record material cited by SBH is properly before the Court, it is not inconsistent with Mr. Ramirez' complete authority for the operation of the station. There is no rule, either of the Commission or in partnership law generally, that requires limited partners to wall themselves off from the partnership in which their funds are invested.

SBH points to no record evidence whatsoever to support its claim that Mr. Ramirez' involvement is a sham—that he does not actually perform as the partnership's general partner and the station's general manager. The size of Mr. Ramirez' investment is not probative of that issue, but it is virtually the only evidence on which SBH relies. Mr. Ramirez devotes his full time to the station, has moved to Hartford, serves as general manager, and as a general partner is personally liable for the partnership's debts. Mr. Ramirez has invested his experience, all of his time and his "sweat equity." In effect, SBH attempts to graft a new requirement onto the distress sale procedure—that the minority general partner invest a minimum share of his personal funds in the venture—that the Commission did not see fit to adopt.<sup>25</sup>

In short, SBH criticizes the distress sale procedure for operating in precisely the manner it should: it united Mr. Ramirez, who has the skills, experience, and ability to operate a television station but not the finances to acquire it, with the limited partnership, whose members are willing to invest the necessary capital but lack the industry experience or the interest to devote to the day-to-day management of a television station. Nothing in the distress sale program requires or even suggests that a minority general partner make a minimum personal investment in the enterprise. All that is required is that the minority partner be a general

<sup>25</sup>Astroline has demonstrated that it is financially qualified. The sale was consummated on January 23, 1985, at which time Astroline paid Faith Center nearly \$.5 million. J.A. IV, 1064. Astroline has secured over \$10 million from private sources as funding for the new station's studio and offices. Additionally, Astroline has been guaranteed sufficient working capital to provide for the day-to-day operation of the station, which calls for the creation of nearly 30 trustee and employee positions. J.A. III, 620-21.

partner and possess a 20 percent or greater ownership interest. Astroline therefore qualifies as a purchaser under the express terms of the distress sale procedure, and SBH's contentions to the contrary are baseless.

**V. NO *EX PARTE* PRESENTATIONS OCCURRED TO WARRANT REVERSAL OF THE COMMISSION'S ACTION.**

SBH alleges that "*ex parte* contacts have occurred between various staff members of the Commission and outside parties relative to the merits of certain matters regarding the questions generally presented by the Faith Center/SBH/ Astroline situation." SBH Br. 38. As demonstrated in the Commission's brief at 37-41, these allegations ask the Court to reach a conclusion of prohibited conduct supported only by innuendo and suspicion.

The FCC has defined an *ex parte* "presentation" as an *ex parte* communication "going to the merits or outcome of a proceeding." 47 C.F.R. § 1.1201(f)(1984). Not all *ex parte* communications are "presentations," and only certain presentations are prohibited by the Commission's Rules. See *Rules Governing Ex Parte Communications in Hearing Proceedings*, 1 F.C.C.2d 49, 56 (1965). "The rules do not preclude communication between interested persons and decision-making Commission personnel concerning the restricted proceeding, if the communication does not go to the merits or outcome of any aspect of that proceeding." *Id.* Although written *ex parte* presentations from members of the general public are discouraged, they are not a violation of the rules. *Id.* at 59 n.11.

SBH has attempted to portray all *ex parte* communications with FCC staff as prohibited presentations, without regard to the nature or source of the communication or the person to whom it was directed. One communication com-

plained of by SBH was an exchange of correspondence between a congressman and Chairman Fowler. SBH Br. 39-40. This correspondence was not a prohibited presentation for two reasons. First, it was not addressed to the merits or outcome of this proceeding (see Fowler letter of Nov. 15, 1983, J.A. II, 386), and second, there is no evidence that the correspondence was solicited or encouraged by any person or party involved in the proceeding. See SBH Br. 40 n.16.

A second communication complained of by SBH was a telephone conversation and subsequent letter from a Faith Center attorney to an attorney on the staff of the Mass Media Bureau. SBH Br. 40. This communication was not a prohibited presentation under the Commission's Rules. Members of the Mass Media Bureau staff are not designated decision-making personnel in restricted adjudicative proceedings and are therefore not prohibited recipients of *ex parte* contacts. See 47 C.F.R. §§ 1.1205, 1.1221 (1984). See also Roberson letter dated March 29, 1984. J.A. II, 426.

Finally, SBH refers to "more than 50 contacts between the Commission, . . . and members of the legislative and executive branches, . . . with respect to Faith Center." SBH Br. 40 n.16. While acknowledging that it has not determined the nature of these contacts, SBH attempts to associate these communications with this proceeding. Such an association is totally unwarranted in the absence of specific information describing these as prohibited presentations related to this proceeding.

In summary, SBH's allegations of prohibited *ex parte* presentations are wholly unfounded and provide no basis upon which to reverse the Commission's action.

## CONCLUSION

The Commission's unanimous decision advances policies underlying the Communications Act and at the heart of the public interest: diversification of programming through diversification of media ownership, service to the public by a qualified licensee with a significant minority interest, and the prompt conclusion of a protracted license renewal proceeding. SBH contends that these public interest considerations must all be sacrificed in the name of a comparative hearing, even though the hearing SBH seeks would be a sterile exercise because SBH acknowledges that Faith Center is unqualified to compete. Neither the Communications Act, this Court's decision in *New South Media*, nor the *Ashbacher* case dictates such a result. The Commission properly discharged its statutory responsibilities by striking a reasonable balance among the policies entrusted to its expert judgment. Therefore, the Commission's Order of December 7, 1984 should be affirmed.

Respectfully submitted,

/s/Thomas A. Hart, Jr.

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September 13, 1985

Mr. William Tricarico  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Revised Ownership Report for  
Station WHCT-TV, Hartford, Connecticut

Dear Mr. Tricarico:

Enclosed is a revised ownership report for Attroline Communications Company Limited Partnership, licensee of Station WHCT-TV, Hartford, Connecticut.

Please contact the undersigned if there are any questions.

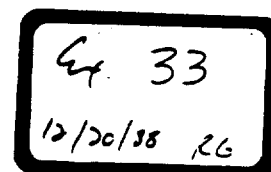
Sincerely,

*Jack Whitley*  
Jack Whitley

JW:kaf

Enclosure

cc: WHCT Public Inspection File



6906

Approved by OMB  
3060-0010  
Expires 4/30/88

United States of America  
Federal Communications Commission  
Washington, D.C. 20554

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Ownership Report

SEP 13 1985

NOTE: Before filling out this form, read instructions printed on  
Page 4.

FCC

Office of the Secretary

Section 310(b) of the Communications Act of 1934 requires that consent of the Commission must be obtained prior to the assignment or transfer of control of a station license or construction permit. This form may not be used to report or request an assignment of license or transfer of control (except to report an assignment of license or transfer of control made pursuant to prior Commission consent).

1. All of the information furnished in Items 1-6 is reported as of

\_\_\_\_\_, 19\_\_\_\_\_. (Date must comply  
with Section 73.3618(a) when box 1(a) below is checked.)  
This report is filed pursuant to instruction (check one)

1(a) ☐ Renewal

1(b) ☐ T.C., A.L.  
or C.P.

1(c) ☒ Change of  
prior report

for the following stations:

Call letters	Location	Class of service
WHCT	Hartford, Ct.	TV

2. Give the name of any corporation or other entity having a direct or indirect ownership interest in the licensee or permittee (see instruction 4).

WHCT Management, Inc.

Astroline Company

(The officers, directors and shareholders  
or partners of the above companies and  
their ownership interests have remained the same)

3. Show the interests in any other broadcast station of the licensee or permittee, or any of its officers, directors, stockholders, or partners. (Corporations having more than 50 stockholders need answer this only with respect to officers and directors, or stockholders having 1% or more of voting stock.)

None

I certify that I am General Partner

CERTIFICATE

(Official title, see instruction 3)

Astroline Communications Company  
of Limited Partnership

(Exact legal title or name of licensee or permittee)

that I have examined this report; that to the best of my knowledge, information, and belief, all statements of fact contained in said report are true and the said report is a correct statement of the business and affairs of the above-named respondent in respect to each and every matter set forth herein.

(Date of certification must be within 30 days of date shown in Item 1 when box 1(a) is checked and in no event prior to Item 1 date.)

X Richard P. Kuning 9-12-1985  
(Signature of respondent)

Telephone No. of respondent (include area code)

Any person who willfully makes false statements on this report can be punished by fine or imprisonment. U.S. Code, Title 18, Section 1001 (formerly Section 80).

Name and post office address of licensee or permittee

Astroline Communications Company  
Limited Partnership  
18 Garden Street  
Hartford, Connecticut 06103

4. Name of corporation, if other than licensee or permittee, for which report is filed (see instruction 4):

N/A

5. If permittee or licensee is a partnership, state the extent of interest of each partner.

See Exhibit One

6. List all contracts and other instruments set forth in Section 73.3613 of the Commission's Rules and Regulations.

Description of contract or instrument	Name of person or organization with whom contract is made	Date of execution	Date of expiration
None		att Check Clay Pendleton 9-17-85	

8. List transactions concerning the ownership stock. (If transaction includes more than one class, check the following should be answered with respect to each class.)

Note: (Read carefully!) The numbered items below refer to line numbers in the following table. Lines 1 thru 17 should be filled out completely when this form is filed to report stock transactions pursuant to instruction 1(c). Lines 1 thru 8, inclusive, should be filled out when the form is used to report ownership after receipt of original construction permit, or continuation, pursuant to Commission consent, of a transfer of control, or assignment of license, pursuant to instruction 1(b). Lines 1 thru 8, inclusive, should be filled out when the form is used to report pursuant to instruction 1(a). Use one column per stockholder. (Attach additional pages if necessary.)

Line 1 - Name and residence of transferee, purchaser, or stockholder (if other than an individual also show name, address, and citizenship of natural person authorized to vote the stock acquired.)  
 2 - Citizenship  
 3 - Number of shares  
 4 - Number of votes  
 5 - Class of stock (Common CML; Preferred PF; Other)  
 6 - Par or stated value  
 7 - Total consideration paid (if other than cash, describe fully.)  
 8 - Date of acquisition  
 9 - Number of shares of stock held by purchaser or transferee prior to this transaction  
 10 - Percentage of issued stock in corporation held by purchaser or transferee prior to this transaction

Line 11 - Total number of shares of stock held by purchaser or transferee subsequent to this transaction  
 12 - Percentage of issued stock in corporation held by purchaser or transferee subsequent to this transaction  
 13 - From whom stock acquired  
 14 - Number of shares of stock held by seller or transferor prior to this transaction  
 15 - Percentage of issued stock held by seller or transferor prior to this transaction  
 16 - Number of shares of stock held by seller or transferor subsequent to this transaction  
 17 - Percentage of issued stock held by seller or transferor subsequent to this transaction

Line	(a)	(b)	(c)
1	N/A	N/A	N/A
2			
3			
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16			
17			

Remarks: (See instructions 3, 7 and 8.)

Note: The purpose of the above computation is to assist the licensee or permittee in determining whether the transaction involves a transfer of control. If such is the case, the transaction cannot be authorized until prior Commission consent has been obtained.

CERTIFICATE

United States of America  
Federal Communications Commission  
Washington, D.C. 20554

Ownership Report

NOTE: Before filling out this form, read instructions printed on Page 4.

Section 310(b) of the Communications Act of 1934 requires that consent of the Commission must be obtained prior to the assignment or transfer of control of a station license or construction permit. This form may not be used to report or request an assignment of license or transfer of control (except to report an assignment of license or transfer of control made pursuant to prior Commission consent).

I certify that I am General Partner  
(Official title, see instruction 3)  
Astroline Communications Company  
of Limited Partnership  
(Exact legal title or name of licensee or permittee)

that I have examined this report; that to the best of my knowledge, information, and belief, all statements of fact contained in said report are true and the said report is a correct statement of the business and affairs of the above-named respondent in respect to each and every matter set forth herein.

(Date of certification must be within 30 days of date shown in item 1 when box 1(a) is checked and in no event prior to item 1 date.)

Richard P. Ramirez 5/29/85  
(Signature of respondent)

Telephone No. of respondent (include area code)

Any person who willfully makes false statements on this report can be punished by fine or imprisonment. U.S. Code, Title 18, Section 1001 (formerly Section 80).

Name and post office address of licensee or permittee.

**Astroline Communications Company  
Limited Partnership  
18 Garden Street  
Hartford, CT 06105**

1. All of the information furnished in items 1-6 is reported as of  
May 23, 19 85. (Date must comply  
with Section 72.3815(a) when box 1(a) below is checked.)  
This report is filed pursuant to instruction (check one)

1(a) ☐ Renewal 1(b) ☒ F.C., A.L.  
or C.P. 1(c) ☐ Change of  
prior report  
for the following stations:

Call letters	Location	Class of service
WHCT-TV	Hartford, CT	TV

2. Give the name of any corporation or other entity having a direct or indirect ownership interest in the licensee or permittee (see instruction 4).

**WHCT Management, Inc. (See Exhibit 1)  
Astroline Company (See Exhibit 2)**

4. Name of corporation, if other than licensee or permittee, for which report is filed (see instruction 4):

N/A

3. Show the interests in any other broadcast station of the licensee or permittee, or any of its officers, directors, stockholders, or partners. (Corporations having more than 50 stockholders need answer this only with respect to officers and directors, or stockholders having 1% or more of voting stock.)

None

5. If permittee or licensee is a partnership, state the extent of interest of each partner.

	Equity	Voting
Richard P. Ramirez General Partner	21%	70%
WHCT Management, Inc. General Partner	9%	30%
Astroline Company General Partner	70%	-0-

6. List all contracts and other instruments set forth in Section 72.3813 of the Commission's Rules and Regulations.

Description of contract or instrument	Name of person or organization with whom contract is made	Date of execution	Date of expiration
Limited Partnership Agreement and Certificate	N/A	5-29-84	Continued in perpetuity unless amended

8. List transactions concerning the ownership of stock. (If transaction includes more than one class of stock, the following should be answered with respect to each class.)

Note: (Read carefully) The numbers 1 through 17 below refer to line numbers in the following table. Lines 1 thru 17 should be filled out completely when this form is filed to report stock transactions pursuant to Instruction 1(c). Lines 1 thru 8, inclusive, should be filled out when the form is used to report ownership after receipt of original construction permit, or consummation, pursuant to Commission consent, of a transfer of control, or assignment of license, pursuant to Instruction 1(b). Lines 1 thru 8, inclusive, should be filled out when the form is used to report pursuant to Instruction 1(a). Use one column per stockholder. (Attach additional pages if necessary.)

- |   |   |
|---|---|
| <p>Line 1 - Name and residence of transferee, purchaser, or stockholder (If other than an individual also show name, address, and citizenship of natural person authorized to vote the stock acquired.)</p> <p>2 - Citizenship</p> <p>3 - Number of shares</p> <p>4 - Number of votes</p> <p>5 - Class of stock (Common CM; Preferred PF; Other)</p> <p>6 - Par or stated value</p> <p>7 - Total consideration paid (If other than cash, describe fully.)</p> <p>8 - Date of acquisition</p> <p>9 - Number of shares of stock held by purchaser or transferee prior to this transaction</p> <p>10 - Percentage of issued stock in corporation held by purchaser or transferee prior to this transaction</p> | <p>Line 11 - Total number of shares of stock held by purchaser or transferee subsequent to this transaction</p> <p>12 - Percentage of issued stock in corporation held by purchaser or transferee subsequent to this transaction</p> <p>13 - From whom stock acquired</p> <p>14 - Number of shares of stock held by seller or transferor prior to this transaction</p> <p>15 - Percentage of issued stock held by seller or transferor prior to this transaction</p> <p>16 - Number of shares of stock held by seller or transferor subsequent to this transaction</p> <p>17 - Percentage of issued stock held by seller or transferor subsequent to this transaction</p> |
|---|---|

1	(a)	(b)	(c)
	N/A	N/A	N/A
2			
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17			

Remarks: (See Instructions 3, 7 and 8.)

N/A

Note: The purpose of the above computation is to assist the licensee or permittee in determining whether the transaction in question involves a transfer of control. If such is the case, the transaction cannot be authorized until prior Commission consent has been obtained.

**Exhibit 1**

**Structure of Ownership and Management**

**WHCT Management, Inc.**

Exhibit One

Two of the partners of Astroline Communications Company Limited Partnership (hereinafter "ACC" have transferred a portion of their partnership interest in the licensee to other parties. Astroline Company has transferred 12% of its limited partnership interest and WHCT Management, Inc. has transferred 4% of its interest. Three of the new principals are members of racial minority groups. The specific nature and dates of the transfers are provided below.

<u>Date</u>	<u>Transferor &amp; Capacity</u>	<u>Transferee, Capacity &amp; Address</u>	<u>% Interest Transferred</u>
8-14-85	Astroline Company Limited Partner	Martha Rose Limited Partner 18 Morgan Street Wenham, MA 01984	6%
8-16-85	Astroline Company Limited Partner	Thelma N. Gibbs Limited Partner 2275 S. Ocean Blvd. Palm Beach, FL 33480	6%
9-6-85	WHCT Management, Inc. General Partner	Don O'Brien Limited Partner 590 Huckleberry Hill Road Avon, CN 06001	1%
9-6-85	WHCT Management, Inc. General Partner	Terry Planell Limited Partner 10 Woodbury Lane West Hartford, CN 06001	1%
9-6-85	WHCT Management, Inc. General Partner	Danielle Webb Limited Partner 18 Garden Street Hartford, CN 06105	1%
9-10-85	WHCT Management, Inc. General Partner	Thomas A. Hart, Jr. General Partner 1862 Ingleside Terrace, N.W. Washington, D.C. 20010	1%

The ownership and voting interests in ACC, after the above transfers, are as follows:

<u>Name and Interest</u>	<u>Percentage Interests</u>	
	<u>Voting</u>	<u>Equity</u>
Richard P. Ramirez General Partner	77.8%	21%
WHCT Management, Inc. General Partner	18.5%	5%
Astroline Company Limited Partner	--	58%
Martha Rose Limited Partner	--	6%
Thelma Gibbs Limited Partner	--	6%
Don O'Brien Limited Partner	--	1%
Terry Planell Limited Partner	--	1%
Danielle Webb Limited Partner	--	1%
Thomas A. Hart, Jr. General Partner	3.8%	1%



Approved by OMB  
3060-0010  
Expires 4/30/86

CERTIFICATE

United States of America  
Federal Communications Commission  
Washington, D.C. 20554

Ownership Report

NOTE: Before filling out this form, read instructions printed on Page 4.

Section 310(b) of the Communications Act of 1934 requires that consent of the Commission must be obtained prior to the assignment or transfer of control of a station license or construction permit. This form may not be used to report or request an assignment of license or transfer of control (except to report an assignment of license or transfer of control made pursuant to prior Commission consent).

I certify that I am \_\_\_\_\_  
(Official title, see instruction 9)

of \_\_\_\_\_  
(Exact legal title or name of licensee or permittee)

that I have examined this report, that to the best of my knowledge, information, and belief, all statements of fact contained in said report are true and the said report is a correct statement of the business and affairs of the above-named respondent in respect to each and every matter set forth herein.

(Date of certification must be within 30 days of date shown in item 1 when box 1(a) is checked and in no event prior to item 1 date.)

*[Signature]*  
(Signature of respondent)

1. All of the information furnished in items 1-6 is reported as of

\_\_\_\_\_ 19 \_\_\_\_\_. (Date must comply with Section 73.3613(a) when box 1(a) below is checked.)

This report is filed pursuant to instruction (check one)

1(a) ☐ Renewal

1(b) ☐ T.C., A.L. or C.P.

1(c) ☐ Change of prior report

for the following stations:

Call letters

Location

Class of service

WHCT

Hartford, Ct.

TV

Telephone No. of respondent (include area code)

Any person who willfully makes false statements on this report can be punished by fine or imprisonment. U.S. Code, Title 18, Section 1001 (formerly Section 80).

Name and post office address of licensee or permittee:

2. Give the name of any corporation or other entity having a direct or indirect ownership interest in the licensee or permittee (see instruction 4).

Astroline Company  
Limited Partnership  
(See Exhibit 2)

4. Name of corporation, if other than licensee or permittee, for which report is filed (see instruction 4):

WHCT Management, Inc.

3. Show the interests in any other broadcast station of the licensee or permittee, or any of its officers, directors, stockholders, or partners. (Corporations having more than 50 stockholders need answer this only with respect to officers and directors, or stockholders having 1% or more of voting stock.)

N/A

5. If permittee or licensee is a partnership, state the extent of interest of each partner.

N/A

6. List all contracts and other instruments set forth in Section 73.3613 of the Commission's Rules and Regulations.

Description of contract or instrument	Name of person or organization with whom contract is made	Date of execution	Date of expiration
Articles of Incorporation	N/A	5-29-84	Perpetual
By-Laws	N/A	5-29-84	Perpetual

B. List transactions concerning the ownership of stock. (If transaction includes more than one class of stock, the following should be answered with respect to each class.)

Note: (Read carefully) The numbered items below refer to line numbers in the following table. Lines 1 thru 17 should be filled out completely when this form is filed to report stock transactions pursuant to Instruction 1(c). Lines 1 thru 8, inclusive, should be filled out when the form is used to report ownership after receipt of original construction permit, or consummation, pursuant to Commission consent, of a transfer of control, or assignment of license, pursuant to Instruction 1(b). Lines 1 thru 8, inclusive, should be filled out when the form is used to report pursuant to Instruction 1(a). Use one column per stockholder. (Attach additional pages if necessary.)

- |   |   |
|---|---|
| <p>Line 1 - Name and residence of transferee, purchaser, or stockholder (if other than an individual also show name, address, and citizenship of natural person authorized to vote the stock acquired.)</p> <p>2 - Citizenship</p> <p>3 - Number of shares</p> <p>4 - Number of votes</p> <p>5 - Class of stock (Common CM; Preferred PF; Other)</p> <p>6 - Par or stated value</p> <p>7 - Total consideration paid (if other than cash, describe fully.)</p> <p>8 - Date of acquisition</p> <p>9 - Number of shares of stock held by purchaser or transferee prior to this transaction</p> <p>10 - Percentage of issued stock in corporation held by purchaser or transferee prior to this transaction</p> | <p>Line 11 - Total number of shares of stock held by purchaser or transferee subsequent to this transaction</p> <p>12 - Percentage of issued stock in corporation held by purchaser or transferee subsequent to this transaction</p> <p>13 - From whom stock acquired</p> <p>14 - Number of shares of stock held by seller or transferor prior to this transaction</p> <p>15 - Percentage of issued stock held by seller or transferor prior to this transaction</p> <p>16 - Number of shares of stock held by seller or transferor subsequent to this transaction</p> <p>17 - Percentage of issued stock held by seller or transferor subsequent to this transaction</p> |
|---|---|

1	(a)	(b)	(c)
	Astroline Company (a limited partnership)  [See remarks below]		
2	U.S.		
3	1,000		
4	1,000		
5	CM		
6	\$ .01		
7	N/A		
8	5-29-84		
9			
10			
11			
12	N/A		
13			
14			
15			
16			
17			

Remarks: (See Instructions 3, 7 and 8.)

Fred J. Boling, Jr. votes stock.

Note: The purpose of the above computation is to assist the licensee or permittee in determining whether the transaction in question involves a transfer of control. If such is the case, the transaction cannot be authorized until prior Commission consent has been obtained.

FCC Form 329

United States of America  
Federal Communications Commission  
Washington, D.C. 20554

**Ownership Report**

Approved by OMB  
3060-0010  
Expires 4/30/86

**RECEIVED**

**FEB 22 1985**

NOTE: Before filling out this form, read instructions printed on  
Page 4.

Section 310(b) of the Communications Act of 1934 requires that consent of the Commission must be obtained prior to the assignment or transfer of control of a station license or construction permit. This form may not be used to report or request an assignment of license or transfer of control (except to report an assignment of license or transfer of control made pursuant to prior Commission consent).

Office of the Secretary  
FCC

**CERTIFICATE**

I certify that I am General Partner  
(Official title, see instruction 9)

of Astroline Communications Company Limited  
(Exact legal title or name of licensee or permittee Partnershi

that I have examined this report: that to the best of my knowledge, information, and belief, all statements of fact contained in said report are true and the said report is a correct statement of the business and affairs of the above-named respondent in respect to each and every matter set forth herein.

(Date of certification must be within 30 days of date shown in item 1 when box 1(a) is checked and in no event prior to item 1 date.)

Richard P. Raving February 22, 1985  
(Signature of respondent)

1. All of the information furnished in items 1-8 is reported as of

February 22, 19 85. (Date must comply  
with Section 73.3615(a) when box 1(a) below is checked.)  
This report is filed pursuant to instruction (check one)

1(a) ☐ Renewal 1(b) ☒ T.C., A.L.  
or C.P. 1(c) ☐ Change of  
prior report  
for the following stations:

Call letters	Location	Class of service
WHCT	Hartford, CT	TV

Telephone No. of respondent (include area code)

Any person who willfully makes false statements on this report can be punished by fine or imprisonment. U.S. Code, Title 18, Section 1001 (formerly Section 80).

Name and post office address of licensee or permittee:

Astroline Communications Company Ltd. Partnerst  
185 Asylum Street  
City Place/31st Floor  
Hartford, CT 06103

2. Give the name of any corporation or other entity having a direct or indirect ownership interest in the licensee or permittee (see instruction 4).

WHCT Management, Inc. (See Exhibit 1)

4. Name of corporation, if other than licensee or permittee, for which report is filed (see instruction 4):

N/A

3. Show the interests in any other broadcast station of the licensee or permittee, or any of its officers, directors, stockholders, or partners. (Corporations having more than 50 stockholders need answer this only with respect to officers and directors, or stockholders having 1% or more of voting stock.)

None

5. If permittee or licensee is a partnership, state the extent of interest of each partner.

See Exhibit 2

6. List all contracts and other instruments set forth in Section 73.3613 of the Commission's Rules and Regulations.

Description of contract or instrument	Name of person or organization with whom contract is made	Date of execution	Date of expiration
Limited Partnership Agreement and Certificate	N/A	5/29/84	Continued in perpetuity unless amended

FEB 25 4 46 PM '85  
RECEIVED  
DIVISION

*3-11-85*

**EXHIBIT 2**

Astroline Communications Company Limited Partnership ("ACC") is a limited partnership. The General Partners in ACC are Richard P. Ramirez and WHCT Management, Inc. The Limited Partner in ACC is Astroline Company. The respective equity interests and voting interests of the partners in ACC are as follows:

<u>GENERAL PARTNERS</u>	<u>EQUITY INTEREST</u>	<u>VOTING INTEREST</u>
Richard P. Ramirez	21%	70%
WHCT Management, Inc.	9%	30%
 <u>LIMITED PARTNER</u>		
↖ Astroline Company	70%	None

A separate Ownership Report (FCC Form 323) is being submitted for WHCT Management, Inc. as Exhibit 1.

ACC certifies that its Limited Partnership Agreement and Certificate conforms in all significant respects to the Uniform Limited Partnership Act.

at transactions concerning the ownership  
respect to each class.)

k. (If transaction includes more than one class

k, the following should be answered with

**Note:** (Read carefully) The numbered items below refer to line numbers in the following table. Lines 1 thru 17 should be filled out completely when this form is filed to report stock transactions pursuant to Instruction 1(c). Lines 1 thru 8, inclusive, should be filled out when the form is used to report ownership after receipt of original construction permit, or consummation, pursuant to Commission consent, of a transfer of control, or assignment of license, pursuant to Instruction 1(b). Lines 1 thru 8, inclusive, should be filled out when the form is used to report pursuant to Instruction 1(a). Use one column per stockholder. (Attach additional pages if necessary.)

<b>Line</b>	<b>1 - Name and residence of transferee, purchaser, or stockholder (If other than an individual also show name, address, and citizenship of natural person authorized to vote the stock acquired.)</b>	<b>Line</b>	<b>11 - Total number of shares of stock held by purchaser or transferee subsequent to this transaction</b>
	<b>2 - Citizenship</b>		<b>12 - Percentage of issued stock in corporation held by purchaser or transferee subsequent to the transaction</b>
	<b>3 - Number of shares</b>		<b>13 - From whom stock acquired</b>
	<b>4 - Number of votes</b>		<b>14 - Number of shares of stock held by seller or transferor prior to this transaction</b>
	<b>5 - Class of stock (Common CM; Preferred PF; Other)</b>		<b>15 - Percentage of issued stock held by seller or transferor prior to this transaction</b>
	<b>6 - Par or stated value</b>		<b>16 - Number of shares of stock held by seller or transferor subsequent to this transaction</b>
	<b>7 - Total consideration paid (If other than cash, describe fully.)</b>		<b>17 - Percentage of issued stock held by seller or transferor subsequent to this transaction</b>
	<b>8 - Date of acquisition</b>		
	<b>9 - Number of shares of stock held by purchaser or transferee prior to this transaction</b>		
	<b>10 - Percentage of issued stock in corporation held by purchaser or transferee prior to this transaction</b>		

1	(a)	(b)	(c)
	N/A	N/A	N/A
2			
3			
4			
5			
6			
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8			
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14			
15			
16			
17			

Remarks: (See Instructions 3, 7 and 8.)

N/A

**Note:** The purpose of the above computation is to assist the licensee or permittee in determining whether the transaction in question involves a transfer of control. If such is the case, the transaction cannot be authorized until prior Commission consent has been obtained.